

Application No.: 09/781,986

10

Docket No.: 59915(51719)

REMARKS

Applicants respectfully request reconsideration of the above-referenced application in light of the amendments above and remarks that follow.

Claims 33, 34 and 36-44 are objected to on formal grounds.

The Examiner rejects claims 1-6, 13-16, 19-26, 31, 32, 35 and 37 under 35 U.S.C. § 102(a) as being unpatentable over Foy et al. ('255). Claim 37 is rejected under 35 U.S.C. § 102(b) as being anticipated by Furtner. Claims 1-3, 5, 6, 15 and 16 are also rejected under 35 U.S.C. § 103(a) as being unpatentable over Overholt in view of Foy. Claims 21 and 35 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Foy. Claims 19-22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Overholt in view of Foy and Furtner. Claims 7-9, 11, 27 and 28 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Lessard. Claims 10, 12, 29 and 30 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Foy. Claims 17 and 18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Foy in view of Foy '065.

Claims 33, 34 and 36-44 are objected to on formal grounds. Applicants have amended the claims to address the formal objections. These amendments are formal in nature and not of substance and have merely been made to correct typographical errors in claims 33, 34, 36, 38, 41 and 42. Applicants submit that the objections to these claims have been obviated and respectfully request the withdrawal of the objection.

Turning to the substantive rejections, what is common to both independent claims 1 and 23, which is not found in the prior art, is the wall alignment system as claimed. The wall alignment system includes one member, which extends along an interior of a wall and is oriented to cooperate with another member on the adjacent sidewall or end wall to engage each other and align the first wall locking member or latching means with the second wall locking member or latching means. This is an important distinction that allows alignment of the structures as defined in claim 1 to

Application No.: 09/781,986

11

Docket No.: 59915(51719)

slidably engage with each other as the walls are moved to upright positions as in claim 23.

Specifically, an inherent problem with the prior art is that, during latching, as one wall passes towards the other, they tend to displace each other. Although the locking mechanisms hold the walls in place relative to each other once locked, entirely in the upright position, because of the elastic nature of the containers, the walls tend to deform and to be deflected away from each other during the latching process.

In the prior art, because of the displacement of the walls, a four stage process was required to, in effect, manually hold and align the walls to each other at substantially upright position to effect locking and/or latching. The claimed alignment means, by engaging the walls to each other, along an interior surface, ahead of the walls being fully upright, now aligns the remaining structure, including the locking means and the latching means so that the process becomes substantially hands free.

Turning specifically to the rejections, claims 1-6, 13-16 and 19-26, 31, 32, 35 and 37 are rejected under 35 U.S.C. § 102(b) as being anticipated by Foy. Applicants respectfully traverse the rejection.

Foy is considered to teach the wall alignment means, including the lowermost delta shaped openings 84 and a second member of locking tab 68. These are considered by the Office Action to extend inwardly towards an interior of the container from an end wall.. However, as is clear from Fig. 3, the delta shaped openings 84 do not extend along an interior surface and therefore **do not interact or cooperate with the locking tab 68 along the interior surface** and therefore do not act to align other structure. Their primary purpose, as disclosed in Foy, is to in effect lock the walls together as they perform the same exact function as all the other locking tabs 68 and openings 84. The Office Action did recognize these identical structures as the locking system.

Furthermore, as specifically required in claim 23, there are no receiving members of the wall alignment system as claimed, because the claimed receiving members form an **opening along the interior face of one of the walls**. There is no

Application No.: 09/781,986

12

Docket No.: 59915(51719)

structure of Foy along an interior face. All of the Foy structure acts within the wall. If there is any orientation to a receiving structure, it is perpendicular to the face of any wall. Accordingly, nothing in Foy teaches or suggests the claimed structure and Applicants respectfully submit that claims 1 and 23 are allowable over Foy.

Claims 2-6, 13-16, 19-26, 31, 32 and 35 and 37 depend from claims 1 and 23 respectively and define patentable combinations in their own right as well as depending from allowable claims 1 and 23.

This is most evident with respect to claim 37, Foy is considered to teach the support system. The Office Action considers the support to be the tongues 27 and the grooves 29. However, the structure of tongues 27 is in fact the hinge system. It does not have a plurality of supports and support receiving members for receiving the support members when the walls are in the upright position. Tongues 27 are always in contact with separating grooves 29 and do not disengage when in the folded position as claimed. Otherwise, the hinge mechanism would come apart and would have to be reattached each time. Accordingly, Foy does not teach the claimed support mechanism of claim 37 and Applicants submit that claim 37 is allowable over Foy.

Accordingly, Applicants submit that Foy does not anticipate any of the claims for the reasons discussed above and respectfully request the withdrawal of the rejection of claims 1-6, 13-16, 19-26, 31, 32, 35 and 37.

Claim 37 is also rejected under 35 U.S.C. § 102(b) as being anticipated by Furtner. Applicants respectfully traverse the rejection. First, Applicants submit that the prestressing functionality of extension 78 and recess 79 is not the claimed support members. Furtner's "support face" is not an actual support, but defines a slide path (83) for movement of the hinge. The structure allows the tilting of the sidewall parts into righted positions to engage the locking elements 37, 39 and to bias the wall in a direction to engage the locking mechanism. This is not the claimed support member, which holds the wall in place in its upright position.

Furthermore, even if one were to argue that the structure was in fact a support, the support occurs at the hinge, not away from the hinges as claimed.

Application No.: 09/781,986

13

Docket No.: 59915(51719)

Accordingly, the claim is not anticipated. This positioning of the support is not mere design choice, but provides the support away from the rotating structure where it is needed.

Accordingly, Applicants respectfully submit that Furtner does not anticipate claim 37 and respectfully request the withdrawal of the rejection under 35 U.S.C. § 102(b).

Claims 1-3, 5, 6, 15 and 16 are considered to be unpatentable over Overholt in view of Foy. Applicants respectfully traverse the rejection.

First, nothing in Overholt teaches the novel aligning means of claim 1 and 23. Therefore, the addition of Overholt does not overcome the deficiencies of Foy as discussed above. Overholt teaches no aligning structure along an interior surface of the walls. There is nothing to guide or align the walls and maintain them in place for the latching mechanism. Everything in Overholt teaches away from the claimed invention by incorporating its auxiliary structure within the wall. Specifically, Overholt's aligning system (82, 84) is a structure that is formed within an edge of the end walls and does not extend along, and is not open to, the interior. It is only hindsight to modify the alignment system, hinge system and support system utilizing Overholt and Foy. Furthermore, the resulting structure would not be any structure along an interior surface, and the references neither teach nor suggest such a structure.

Claims 19-22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Overholt in view of Foy and further in view of Furtner. Applicants respectfully traverse the rejection.

Claim 19-22 depend from claim 1 and define Applicants' invention with greater particularity. These claims define the novel crate having a wall with guides across the interior of the wall. The claims further define the novel hinging means with the support members disposed between the outermost hinging members and the ends of the sidewall. As discussed above, none of Overholt, Foy or Furtner disclose the novel guide means disposed along the interior of the wall for receiving the second wall as it pivots to an upright position. Secondly, as discussed above, Furtner does not

Application No.: 09/781,986

14

Docket No.: 59915(51719)

teach nor suggest the claimed support. Accordingly, Applicants submit that the addition of Further does not overcome the deficiencies of Overholt and Foy and Applicants respectfully request the withdrawal of the objection under 35 U.S.C. § 103(a).

Claims 21 and 35 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Foy. Applicants respectfully traverse the rejection.

The Office Action concedes that the claimed support members and receiving members are not found between the two outermost hinges. As discussed above, this is not an obvious expedient, but provides support where most efficient. In addition, claims 21 and 35 depend from claims 1 and 23 respectively, and include structure not found in Foy in addition to the novel alignment system. Accordingly, Applicants submit that claims 21 and 35 are allowable as defining patentable combinations in their own right as well as depending from allowable claim 1.

Claims 7-9, 11, 27 and 28 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Foy in view of Lessard. Applicants respectfully traverse the rejection.

As conceded in the Office Action, Foy does not disclose a biased panel as a latching member. Lessard does nothing to overcome the deficiencies of Foy discussed above. Claims 7-9, 11, 27 and 28 depend from claims 1 and 23 respectively and define the claimed invention with greater particularity. Accordingly, these claims are allowable as defining patentable combinations in their own right as well as depending from allowable claims 1 and 23.

Claims 10, 12, 29 and 30 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Foy in view of Lessard and further in view of Overholt. Applicants respectfully traverse the rejection.

Overholt relies on a structure, which is purposely internal to the walls; its structure is not adaptable or combinable with Foy or Lessard. As clearly seen in Overholt, the portion of the living hinge relied upon in the Office Action does not extend to an outer rear surface of a biased member and an outer rear surface of an end wall

Application No.: 09/781,986

15

Docket No.: 59915(51719)

for limiting the distance that the recited biased member can deflect. It is all internal to the wall. Therefore, it does not include a member that extends from its outer rear surface for preventing deformation. While the patent of Overholt does disclose a biased member, even if its structure is considered a deformation prevention member, it does not extend between the outer rear surface of the biased panel and an outer rear surface of an end wall as recited in the claims. Accordingly, Applicants respectfully request the withdrawal of the rejection under 35 U.S.C. § 103(a).

Claims 17 and 18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Foy in view of Foy '065. It is conceded in the Office Action that Foy does not teach the stacking projections. However, Foy '065 is considered to teach such stacking. Applicants respectfully traverse the rejection.

Nothing in Foy '065 overcomes the deficiencies of the first Foy patent. There is no motivation for such a modification of Foy and even if there were it would not result in the claimed invention, which includes the novel aligning means in a novel combination with the hinging means or, as in claim 1, novel locking means.

Applicants submit that in light of the above, the claims are in condition for allowance. If the Examiner is unable to issue an immediate Notice of Allowance, he is respectfully requested to telephone the undersigned attorney at (954) 667-6130 with a view to discussing any outstanding issues.

Dated: March 2, 2005

Respectfully submitted,

By 
Howard M. Gitten
Registration No.: 32,138
EDWARDS & ANGELL, LLP
P.O. Box 55874
Boston, Massachusetts 02205
(954) 667-6130
Attorney for Applicant